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Planning Commission Staff Report

TO: PLANNING COMMISSION

FROM: JORDAN FELD, AICP, SENIOR PLANNER
(480) 503-6748, JORDAN.FELD@GILBERTAZ.GOV

THROUGH: CATHERINE LORBEER AICP, PRINCIPAL PLANNER
(480) 503-6016, CATHERINE.LORBEER@GILBERTAZ.GOV

MEETING DATE: DECEMBER 3, 2014

SUBJECT:

- A. GP14-08, WHITFILL NURSERY: REQUEST FOR MINOR GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE CLASSIFICATION OF APPROXIMATELY 3.3 ACRES OF REAL PROPERTY GENERALLY LOCATED NORTH OF THE NORTHWEST CORNER OF COOPER ROAD AND GUADALUPE ROAD FROM RESIDENTIAL > 0-1 DU/ACRE TO GENERAL COMMERCIAL (GC).**
- B. Z14-18, WHITFILL NURSERY: REQUEST TO REZONE APPROXIMATELY 3.3 ACRES OF REAL PROPERTY GENERALLY LOCATED NORTH OF THE NORTHWEST CORNER OF GUADALUPE ROAD AND COOPER ROAD FROM SINGLE FAMILY-35 (SF-35) ZONING DISTRICT TO GENERAL COMMERCIAL (GC) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT (PAD) OVERLAY.**

STRATEGIC INITIATIVE: Community Livability

The Town's Community Livability Strategic Initiative emphasizes the importance of promoting growth while retaining its defining characteristics; the requested actions further this initiative by bringing a successful and existing business enterprise into policy and zoning conformance.

RECOMMENDED MOTION

A. MOVE TO RECOMMEND TO TOWN COUNCIL APPROVAL OF GP14-08 A MINOR GENERAL PLAN AMENDMENT; AND

B. FOR THE REASONS SET FORTH IN THE STAFF REPORT, MOVE TO RECOMMEND APPROVAL TO THE TOWN COUNCIL FOR Z14-18, AS REQUESTED, SUBJECT TO THE CONDITIONS LISTED IN THE STAFF REPORT.

APPLICANT/OWNER

Company:	Hilgart Wilson	Company:	Whitfill Nursery
Name:	Toni Bonar	Name:	Brian Blake
Address:	2141 E Highland Ave #250 Phoenix, AZ 85016	Address:	2647 E Southern Ave Phoenix, AZ 85040
Phone:	602-490-0535	Phone:	602-430-3980
Email:	tbonar@hilgartwilson.com	Email:	brian@whitfillnursery.com

BACKGROUND/DISCUSSION

History

Date	Description
<i>June 5, 1984</i>	Town Council adopted Annexation No. A83-2, Ordinance No. 377.
<i>August 6, 2014</i>	GP14-08 and Z14-18 The Planning Commission discussed the item during Study Session.
<i>September 3, 2014</i>	GP14-08 and Z14-18 The Planning Commission held a public hearing on the subject applications and recommended approval to the Town Council.

Overview

On September 3, 2014, the Planning Commission held a public hearing on the subject applications. After considerable discussion and having heard testimony from the applicant and a concerned resident; the Planning Commission voted (7-0) to recommend approval of the requested General Plan amendment and rezoning, subject to conditions. The Planning Commission's recommendation supported only two of the several deviations requested. The two deviations included in the Planning Commission recommendation related to setbacks from a non-residential property line and the use of commercially-zoned property to provide primary access to a residential use.

The Planning Commission recommendation did not include the balance of the deviations that dealt with adjacent property compatibility and buffer; the Planning Commission found that the grant of deviations applied to the current use would also allow future uses of the site to enjoy the same deviations and therefore, the compatibility and buffer standards needed to remain in place to ensure the community's long-term welfare. In making this finding the Planning Commission

advised the applicant to seek alternative relief through the variance process if the deviations were desired.

On October 23, 2014, the applicant resubmitted the applications for GP14-08 and Z14-18. The applications now include a third parcel (immediately north of the previously included parcels) controlled by Whitfill Nursery; this parcel also supports the commercial nursery operation (currently used as a nursery caretakers residence) despite its residential land use designation and zoning. In addition to adding the third parcel to the request, the applicant has removed the previous PAD deviations related to the reduction of compatibility and buffering of adjacent property as well as the PAD deviation related to primary residential access through a commercial property. The current application is only requesting deviations related to setbacks (building and landscaping) from non-residential property.

On October 23, 2013, the applicant also submitted a variance application (V14-08) that addresses the deviations desired for the nursery operation that were not included in the Planning Commission recommendation.

Surrounding Land Use & Zoning Designations:

	Existing Land Use Classification	Existing Zoning
North	Residential >0-1 DU/Acre	Single Family-35 (SF-35)
South	Neighborhood Commercial	General Commercial (GC)
East	Residential 3.5-5 DU/Acre	Single Family-7 (SF-7)
West	Residential >0-1 DU/Acre	Single Family-35 (SF-35)
Site	Residential >0-1 DU/Acre	Single Family-35 (SF-35)

General Plan

GP14-08 requests a Minor General Plan Amendment to change the land use classification on the property from Residential > 0-1 DU/Acre to General Commercial (GC).

Compliance with the General Plan

Chapter 2, Goal 1.0, Promote Gilbert as a community in which to live, work and plan. Policy 1.2 – Create neighborhoods with an identity that complement Gilbert’s heritage and connect to the broader community. Whitfill Nursery provides a connection with Gilbert’s agrarian heritage while providing a valuable specialty service for the community.

Chapter 2, Goal 5.0, Promote commercial, retail, and employment land uses that are compatible with adjacent land uses and meet economic goals. Policy 5.3 – Locate commercial and retail uses adjacent to residential uses in appropriate intensities to serve local, community and regional markets. Whitfill Nursery blends well with its adjacent large lot residential while serving a larger regional market.

Chapter 12, Goal 1.0, Promote preservation and maintenance of property; improve appearance with landscape and design. Policy 1.5 - Infill development should respect the existing character of the neighborhood while providing an enhancement to the neighborhood. The residential neighborhood adjacent to the Whitfill Nursery is large lot. Landscape and building setbacks on the commercial parcel need to provide adequate separation to ensure compatibility over time.

Rezoning

Z14-18 requests to rezone the property from Single Family-35 (SF-35) to General Commercial (GC) with a Planned Area Development District (PAD) overlay. Nursery is allowed by right in the GC district. The specific deviations contemplated by the revised request are outlined below.

<i>Base Standards</i>	<i>GC Zoning</i>	<i>PAD Deviation</i>	<i>Staff Analysis</i>
Bldg. and Landscape Side yard Setback (Non-Residential)	20'	0'	No concern as these are internal setbacks on the commercial property; the proposed building setback between the subject and the nursery operation is acceptable.

Summary

Staff supports the deviations to eliminate internal setbacks. The addition of the third parcel is reasonable as any future redevelopment would need to comply with all of the compatibility and buffering standards required for GC development adjacent to residential.

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, and an official notice was posted in all the required public places within the Town.

A neighborhood meeting was held on May 12, 2014. Five residents adjacent to the property or living within close proximity attended. Concerns were voiced over compatibility between adjacent residential properties and the nursery operations. One adjacent resident provided a comment form detailing their desire that all development standards in place for commercial to residential compatibility not be modified.

Prior to the Planning Commission public hearing on September 3rd, staff was able to speak with two of the property owners immediately adjacent to the subject site; both property owners indicated that the nursery use was compatible with their residences but opposed deviating compatibility standards that would ensure future redevelopment remained compatible. At the Planning Commission public hearing on September 3rd, testimony was given by a nearby resident in opposition to the requested commercial zoning as well as the requested deviations.

PROPOSITION 207

An agreement to “Waive Claims for Diminution in Value” Pursuant to A.R.S. § 12-1134 was signed by the landowners of the subject site, in conformance with Section 5.201 of the Town of Gilbert Land Development Code. This waiver is located in the case file.

REASONS FOR THE RECOMMENDATION

1. The proposed zoning amendment conforms to the General Plan as amended, any applicable Specific Area Plan, neighborhood, or other plan and any overlay zoning district.
2. All required public notice has been conducted in accordance with applicable state and local laws.
3. All required public meetings and hearings have been held in accordance with applicable state and local laws.
4. The proposed rezoning supports the Town's strategic initiative for Community Livability. It supports the motto "Gilbert: Clean, Safe, Vibrant."

STAFF RECOMMENDATION

- A. Recommend to the Town Council approval of GP14-08, to change the land use classification of approximately 3.3 acres of real property generally located north of the northwest corner of Cooper Road and Guadalupe Road from Residential > 0-1 DU/Acres to General Commercial (GC) land use classification; and
- B. For the following reasons: the development proposal conforms to the intent of the General Plan and can be appropriately coordinated with existing and planned development of the surrounding areas, and all required public notice and meetings have been held, the Planning Commission moves to recommend approval to the Town Council for Z14-18 rezoning of approximately 3.3 acres of real property generally located north of the northwest corner of Cooper Road and Guadalupe Road from Single Family-35 (SF-35) zoning district to General Commercial (GC) zoning district with a Planned Area Development (PAD) overlay, subject to the following conditions:
 1. That development shall comply with the Town of Gilbert Land Development Code, except as modified by the following:

<i>Standards</i>	<i>GC</i>
Minimum Setbacks (ft.)	
<i>Side (Nonresidential)</i>	0'
Minimum Required Perimeter Landscape Area (ft.)	
<i>Side (Nonresidential)</i>	0'

Respectfully submitted,



Jordan Feld, AICP
Senior Planner

Attachments:

Attachment 1	Notice of Public Hearing
Attachment 2	Aerial Photo
Attachment 3	General Plan Exhibit
Attachment 4	Zoning Exhibit
Attachment 5	Development Plan
Attachment 6	Meeting Minutes, September 2014 Planning Commission

Notice of Public Hearing

PLANNING COMMISSION DATE:

TOWN COUNCIL DATE:

Wednesday, December 3, 2014* TIME: 6:00 PM

Thursday, December 18, 2014* TIME: 7:00 PM

LOCATION: Gilbert Municipal Center

Council Chambers

50 E. Civic Center Drive

Gilbert, Arizona 85296

GP14-08 & Z14-18

Attachment 1: Notice of Public Hearing

December 3, 2014

*** Call Planning Department to verify date and time: (480) 503-6700**

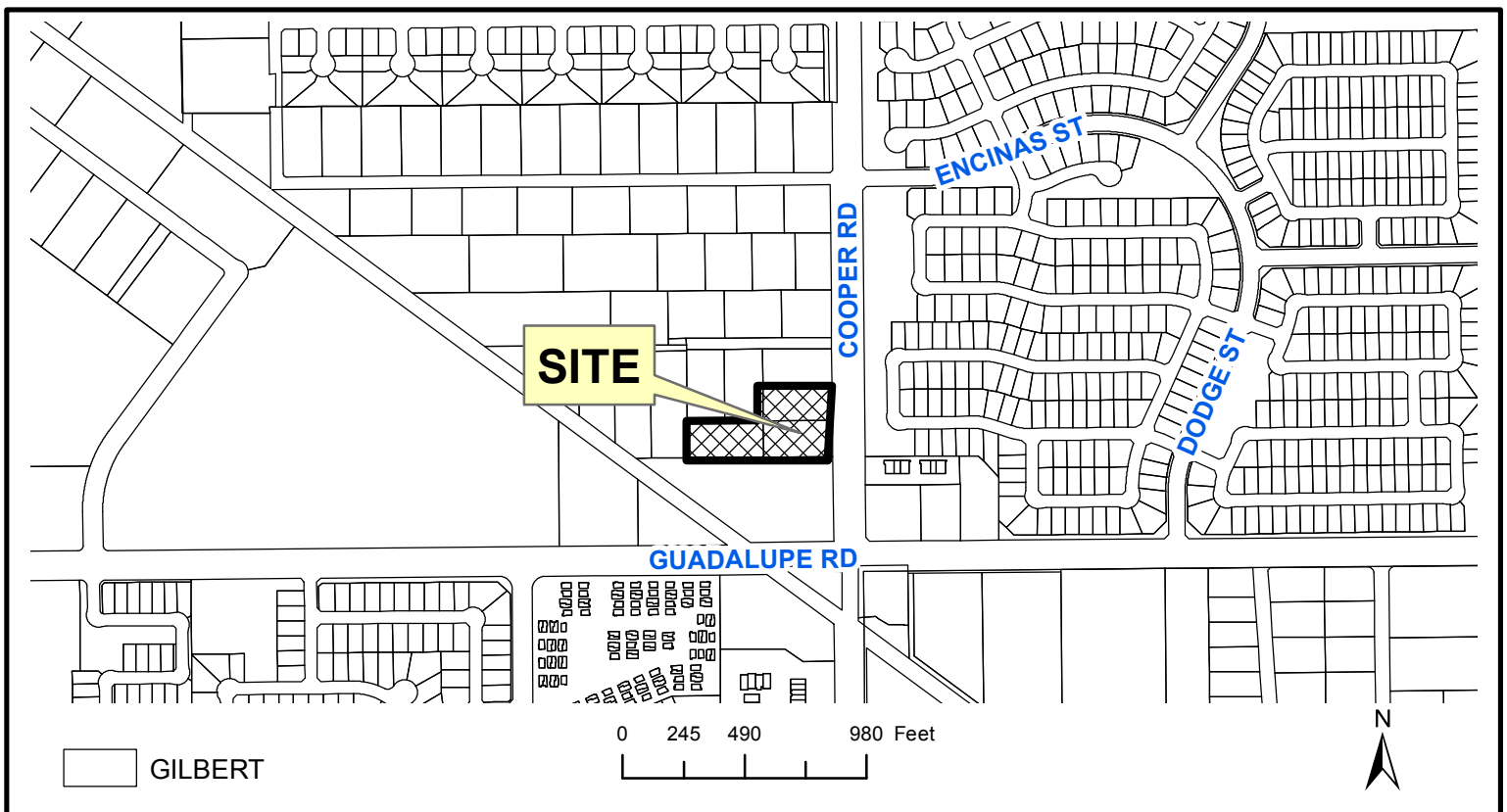
REQUESTED ACTION:

GP14-08: Request for Minor General Plan Amendment to change the land use classification of approximately 3.3 acres of real property generally located north of the northwest corner of Guadalupe Road and Cooper Road from Residential >0-1du/ac land use classification to General Commercial land use classification. The effect of this amendment will be to change the plan of development for the property to allow continued commercial use.

Z14-18: Request to rezone approximately 3.3 acres of real property generally located north of the northwest corner of Guadalupe Road and Cooper Road from Single Family-35 (SF-35) zoning district to General Commercial (GC) zoning district with a Planned Area Development Overlay zoning district to modify requirements related to minimum building and landscape setbacks from non-residential property. The effect of the rezoning will be to allow continued commercial use.

* The application is available for public review at the Town of Gilbert Development Services division Monday - Thursday 7 a.m. - 6 p.m. Staff reports are available the Monday prior to the meeting at <http://www.gilbertaz.gov/departments/development-services/planning-development/planning-commission>

SITE LOCATION:



APPLICANT: Hilgartwilson, LLC

CONTACT: Toni Bonar

ADDRESS: 2141 E. Highland Ave, Suite 250

Phoenix, AZ 85016

TELEPHONE: (602) 490-0535 ext 118

E-MAIL: tbonar@hilgartwilson.com



GP14-08 & Z14-18
Attachment 2: Aerial Photo
December 3, 2014

PARCEL #	GROSS AREA (Ac)	NET AREA (Ac)	EXISTING LAND USE CLASSIFICATION	PROPOSED LAND USE CLASSIFICATION	% OF TOTAL ACREAGE IN LAND USE CLASSIFCATION
302-12-024A	1.14	0.92	SF-35 (RESIDENTIAL)	GC (GENERAL COMMERCIAL)	100%
302-12-024B	1.03	1.03	SF-35 (RESIDENTIAL)	GC (GENERAL COMMERCIAL)	100%
302-12-028	1.14	0.93	SF-35 (RESIDENTIAL)	GC (GENERAL COMMERCIAL)	100%

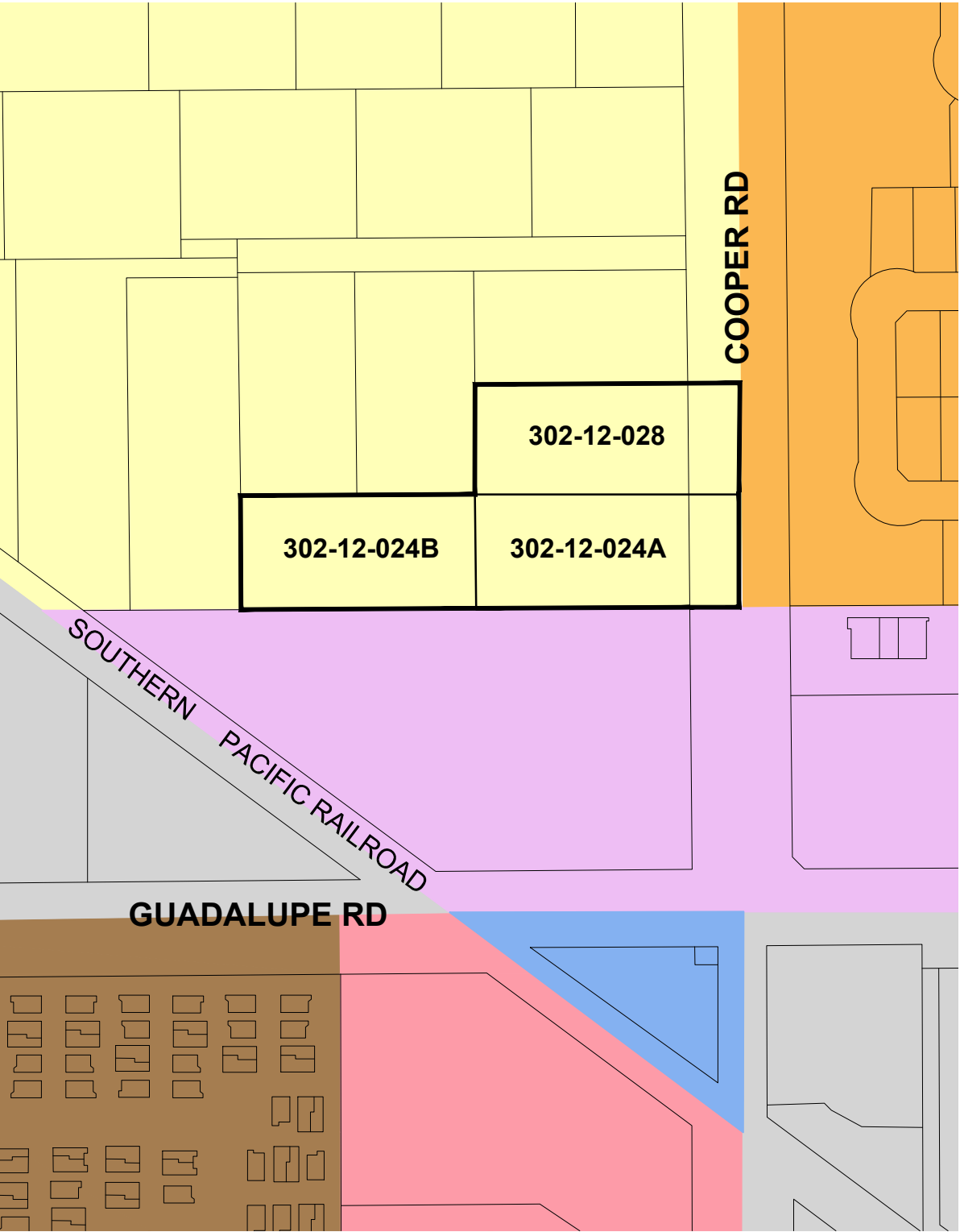
GP14-08 & Z14-18
Attachment 3: General Plan Exhibit
December 3, 2014

WHITFILL NURSERY

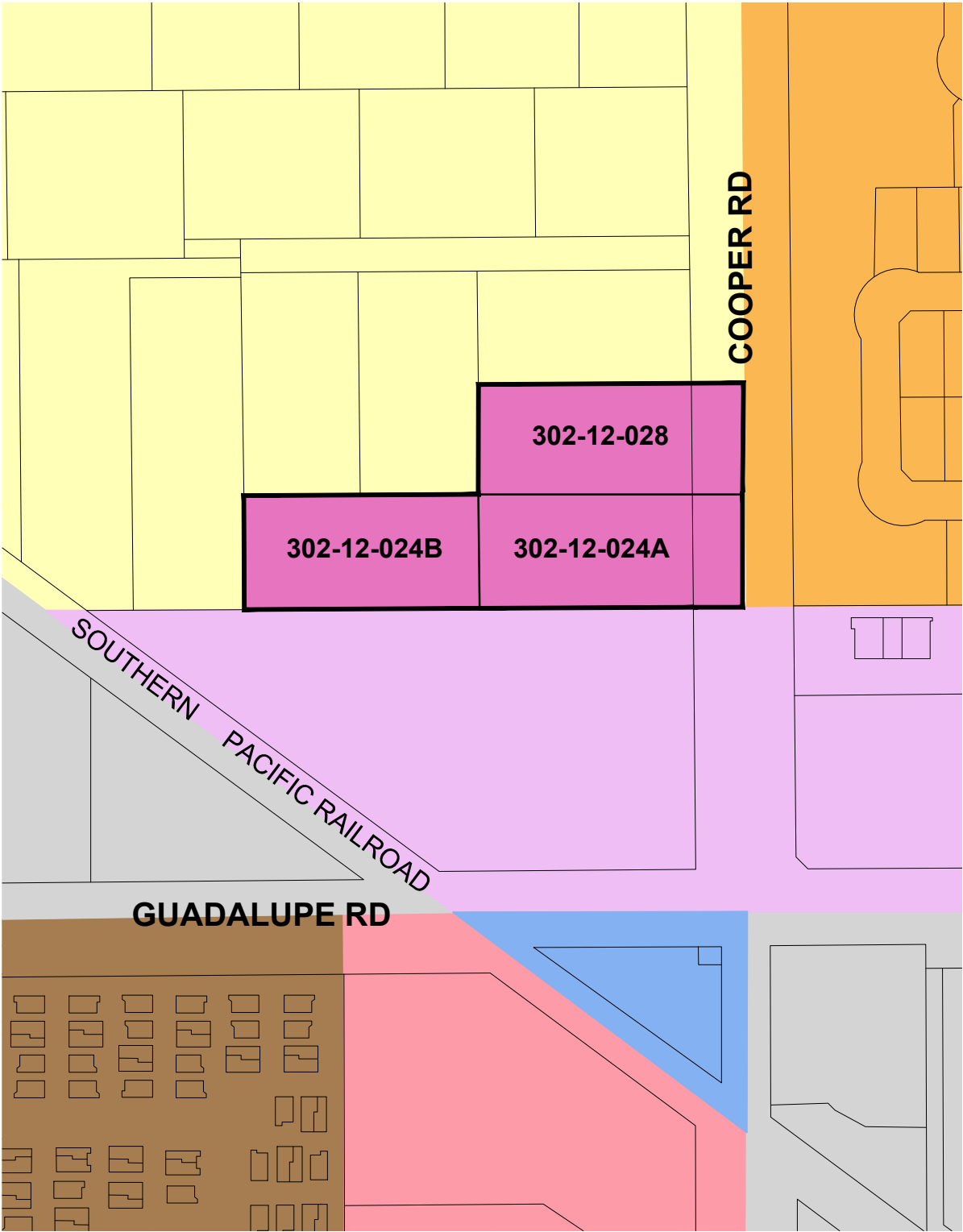
Gilbert, Arizona
MINOR GENERAL PLAN AMENDMENT
LAND USE COMPARISON EXHIBIT

Figure 3

CURRENT - RESIDENTIAL>0-1 DU/AC



AMENDED - GENERAL COMMERCIAL



North

Legend

Amendment Area (3.3 Ac Gross, 2.9 Ac Net)

Current GP Classification - Residential>0-1 DU/AC
Amended GP Classification - General Commercial

Town of Gilbert Land Use Classifications

- Neighborhood Commercial
- General Commercial
- Community Commercial
- Light Industrial
- General Industrial
- Public Facility/Institutional
- Residential > 0-1 du/Ac
- Residential > 3.5-5 du/Ac
- Residential > 8-14 du/Ac

Notes

This exhibit is conceptual and subject to change through the design and development process.

SOURCE

TOWN OF GILBERT LAND USE
MAP:<http://www.cpchampion.com/wp-content/uploads/pdf/research/genplans/Gilbert.pdf>

OCT. 23, 2014
Project Number: 1466.01
Project Manager: T. Bonar, AICP
Designed By: HW
Graphics By:
Drawn By: DD

HILGARTWILSON
2141 E. HIGHLAND AVE., STE. 250
PHOENIX, AZ 85016
P: 602.490.0535 / F: 602.368.2436

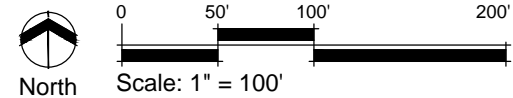
U:\1400\1466\1466.0101 - Whitfill Nursery\PLANNING\ENTITLEMENT\GPA\2nd Submittal\Figures\1466-GPA-Figure-3-Land Use Comparison Exhibit.dwg
Oct 20, 2014 12:19pm
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WHITFILL
NURSERY

Gilbert, Arizona
PLANNED AREA DEVELOPMENT

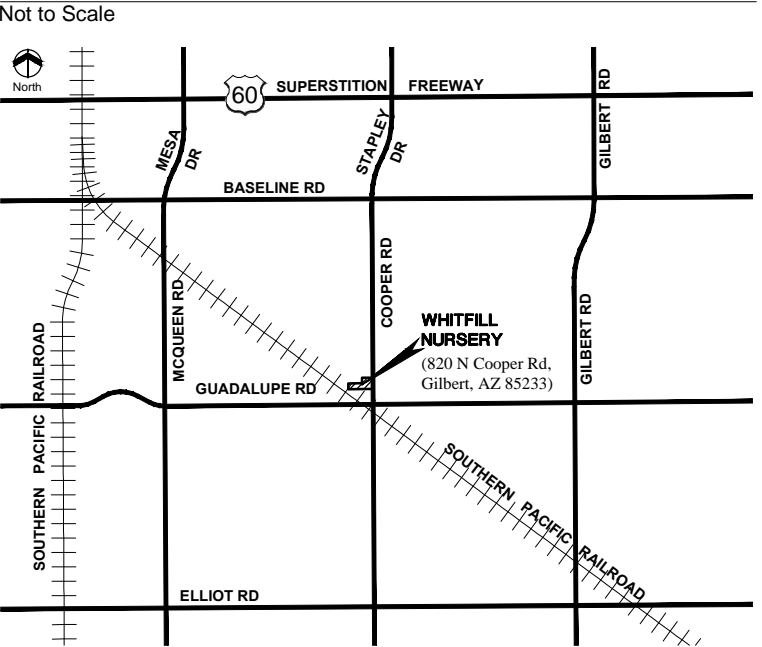
ZONING EXHIBIT

Figure 2



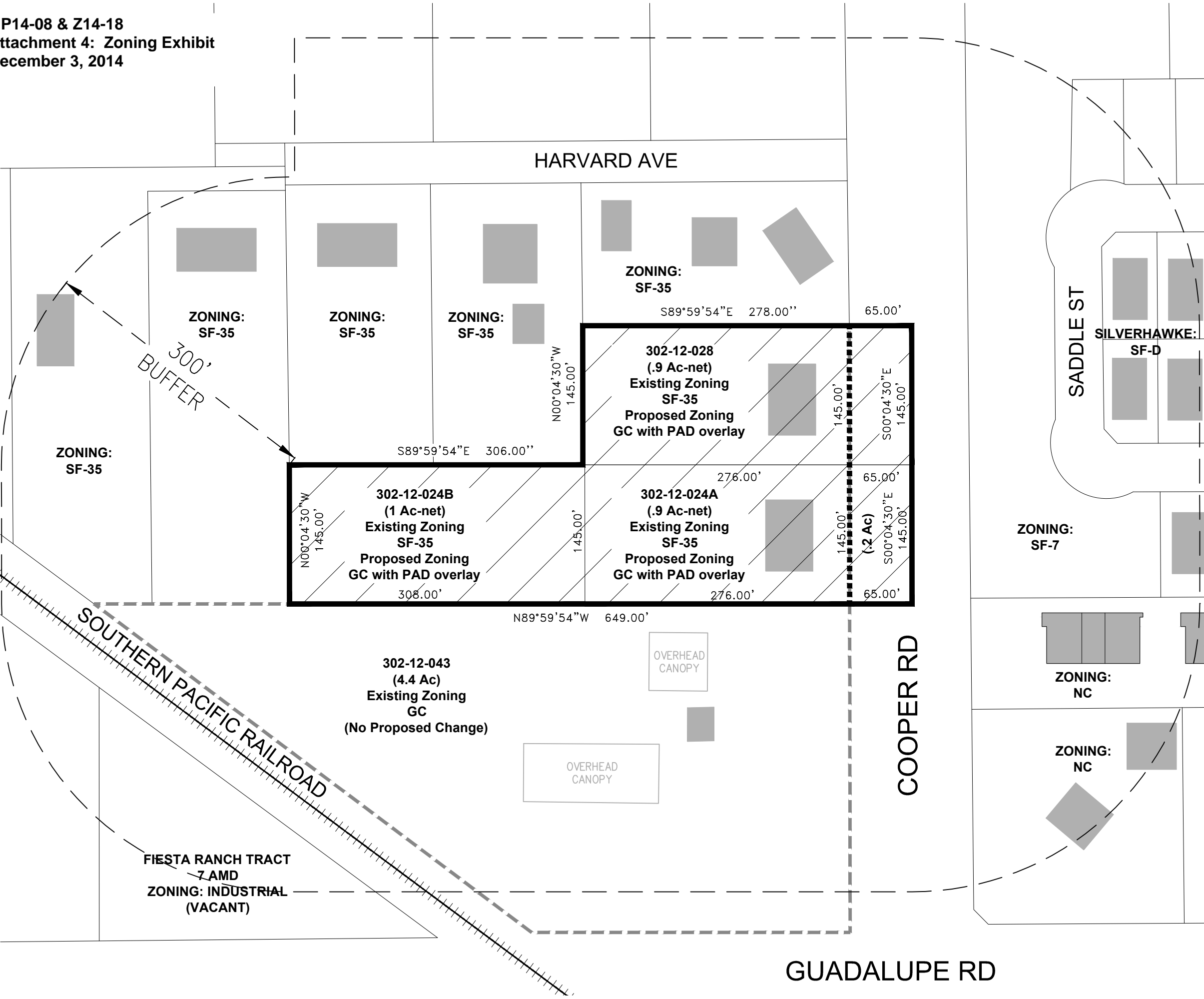
Legend	
	PAD Boundary - 3.3 Ac (Gross)
	Ownership Boundary within PAD Boundary - 2.9 Ac (Net)
	Area of Amendment - (3.3 Ac)
	Whitfill Nursery Ownership Boundary (Including PAD area and parcels not included in PAD for reference)
	Existing Structure

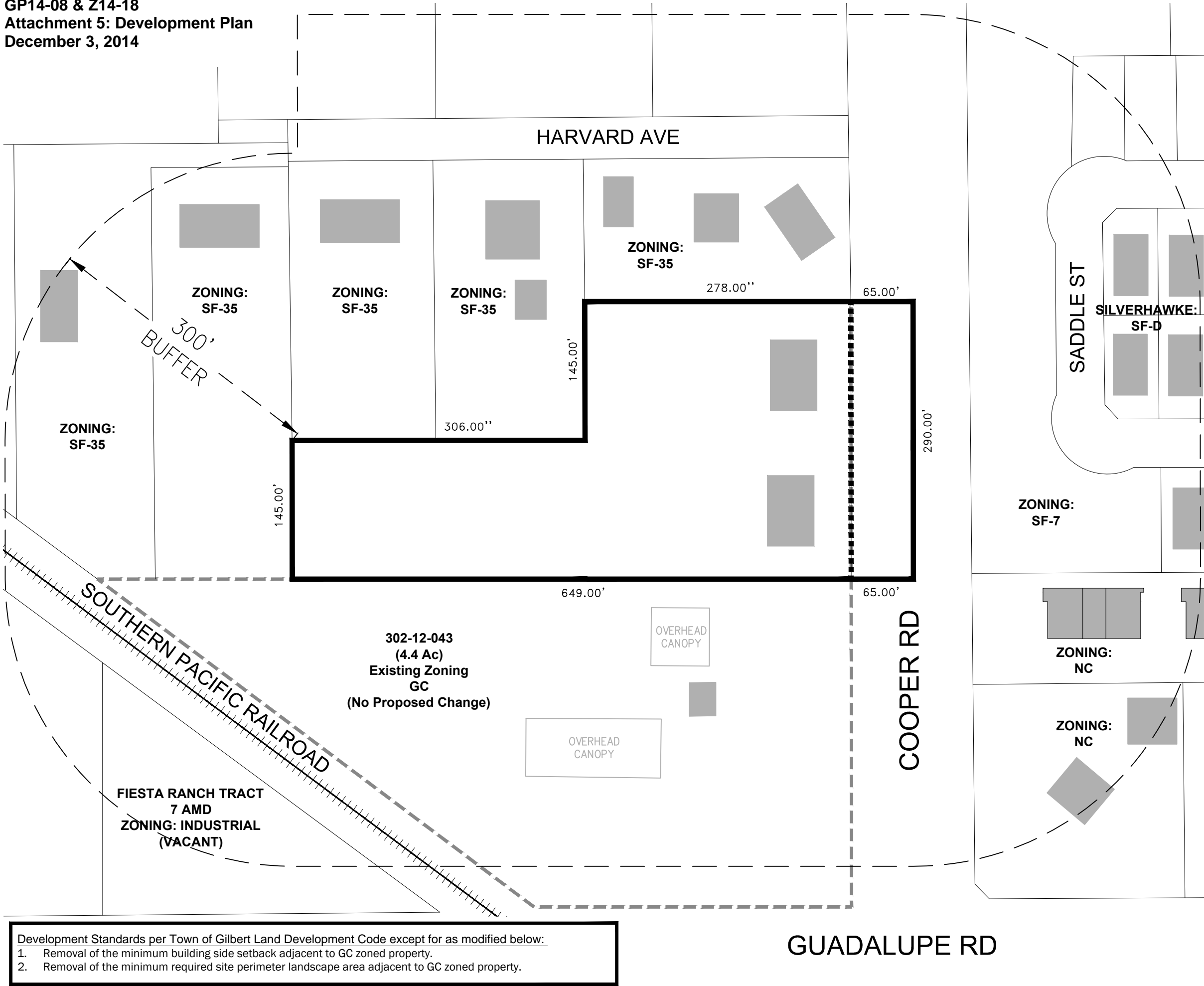
Vicinity Map



Notes

1. There are no public streets within the net parcel.
2. This exhibit is conceptual and subject to change through the design and development process.





WHITFILL NURSERY

Gilbert, Arizona
PLANNED AREA DEVELOPMENT

DEVELOPMENT PLAN

Figure 3

North
Scale: 1" = 100'

Legend

- PAD BOUNDARY - 3.3 AC (GROSS)
- OWNERSHIP BOUNDARY WITHIN PAD BOUNDARY - 2.9 AC (NET)
- WHITFILL NURSERY OWNERSHIP BOUNDARY (INCLUDING PAD AREA AND PARCELS NOT INCLUDED IN PAD FOR REFERENCE)
- EXISTING STRUCTURE

Development Standards

MAXIMUM BUILDING HEIGHT: 45'
MINIMUM BUILDING SETBACKS:
FRONT: 25'
SIDE (RESIDENTIAL): 75'
REAR (RESIDENTIAL): 75'

Notes

- There are no public streets within the net parcel.
- This exhibit is conceptual and subject to change through the design and development process.

Development Standards per Town of Gilbert Land Development Code except for as modified below:

- Removal of the minimum building side setback adjacent to GC zoned property.
- Removal of the minimum required site perimeter landscape area adjacent to GC zoned property.

GP14-08 & Z14-18
Attachment 6: Meeting Minutes, September 2014
Planning Commission
December 3, 2014

Commissioner Cavenee said that he was in agreement that they were not in a position to give recommendations pertaining to design and that it seemed to be wholly felt that it was really just an integration issue and not just the use.

Commissioner Blaser said that he believed multifamily was a great use for that location and thought that it was important that they view the issue through the lens that it is now its own parcel and they need to consider that. It's important that they don't make things too difficult because of what was approved several years ago. It's a completely different project, development and parcel. He said that he would support a continuance based on everything that was said.

A motion was made by Commissioner Kristopher Sippel and seconded by Commissioner David Cavenee to CONTINUE Z13-08 2 the October 1, 2014 regular meeting.

Motion carried 7 – 0

GP14-08 - Whitfill Nursery - Request for Minor General Plan Amendment to change the land use classification of approximately 2.2 acres of real property generally located north of the northwest corner of Guadalupe Road and Cooper Road from Residential >0-1du/ac land use classification to General Commercial land use classification.

Z14-18 - Whitfill Nursery - Request to rezone approximately 2.2 acres of real property generally located north of the northwest corner of Guadalupe Road and Cooper Road from Single Family-35 (SF-35) zoning district to General Commercial (GC) zoning district with a Planned Area Development Overlay zoning district to modify requirements related to minimum building setbacks, minimum landscape areas, commercial activity enclosure, vehicular access and screening.

Senior Planner Jordan Feld displayed a site plan and indicated the location of the subject 2.2 acres. Planner Feld noted that the applicant had contacted staff regarding potential changes to their proposed deviations and after some discussion the applicant decided to stay with the proposed deviations. Planner Feld displayed a graphic which showed the standards in place in the General Commercial (GC) zoning district that the applicant is seeking and pointed out on the graphic the distances to the back of the residences adjacent to the subject parcel. The applicant has proposed several deviations, the majority of which have room for negotiation in terms of the nursery use specifically in the deviations that were requested. Staff has not had success in finding the sweet spot for the deviations in terms of locking them through the zoning. Consequently staff's recommendation is to approve the rezoning and general plan amendment as requested except for the two PAD deviations that staff is recommending and the balance of the deviations requested, staff is not recommending. Staff supports the access of the residential lot north of the subject site through the subject site that will create a safer traffic condition. Staff is supportive of the reduction of the internal setbacks from a commercial parcel to another commercial parcel. The applicant will speak to several issues which have to do with the compatibility of the nursery with the surrounding neighborhood. Planner Feld said that he would stipulate that the three neighbors enjoyed the nursery use and find that use compatible with their large lot residential uses. He noted that he spoke with 2 of the 3 adjoining neighbors and asked them how they felt about the property redeveloping for another commercial use, something more intense with less landscaping. He asked if they would still be supportive of an organic hedge with no landscape setback beyond that and the answer was no. If the property was to redevelop they would want a 40 foot landscape setback with a solid wall between their properties and that future development. The question becomes does rezoning to GC and deviating from the standards allow the opportunity for the site to put those standards in place if the property redevelops. The answer is no that it does not. That can only be achieved by a variance. Planner Feld said they had advised the applicant that deviation through rezoning will not allow for that solution to occur and the variance perhaps would. There is risk as there is no guarantee that a variance would be approved. Planner Feld said that it is not arguable that a nursery is compatible with the adjacent large lot residential and the neighborhood is generally okay with the nursery as it is today. The applicant can point to different nurseries throughout the region where there is less than a 40 foot

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Regular Meeting 9-3-14

landscape setback. At the end of the day none of that has any specific bearing on the question at hand which is the use today that is illegally nonconforming and to mitigate that condition the property must be rezoned to GC and to ensure that any future development is compatible with the surrounding neighborhood the GC standard must remain in place. If the applicant chooses to seek a variance after the fact and those standards are deviated those standards are then tied to the nursery itself.

Chairman Wittmann invited the applicant to come forward.

Brian Blake, Phoenix Arizona, came forward. Mr. Blake commented that his residence was in Phoenix but his nursery has been in Gilbert since 1983. He noted that when he moved to Gilbert there were approximately 10,000 people who lived in the area at the time. He was leasing the property from the Cooley's who owned a lot of property in that area. Within a few months he was cited by the Town of Gilbert. He was told that he could not have the nursery there and that the nursery required commercial zoning. The Town attorney advised him that if he would like to rezone the property the Town would not have any objection to it. They then hired David Udall to rezone the property which cost approximately \$10,000. When the property was rezoned the first time they ended up giving 27,000 ft.² of property to put a landscape border around the corner. He spent \$50,000 in 1983 when he was 22 years old to landscape the property and get the parking lot in compliance for the town. In 1990 the Town decided to widen the road which was very detrimental to Mr. Blake's business, however, they lived through it. In 1999 Jeff Cooley asked if Mr. Blake would like to lease the property behind his house which is next door in the back pasture. Mr. Blake agreed and Mr. Cooley went to the Town and got permission for Mr. Blake to lease the 2 parcels. That is the 2 parcels that they are looking at rezoning currently. In 2005 Mr. Blake purchased the four parcels from Mr. Cooley. At that point in time he had been on the property for roughly 22 years and had not had a complaint from the Town of Gilbert. In 2008 he received a complaint from one neighbor. That one neighbor's complaint started the city's actions against them. Since 2008 Mr. Blake said that he has basically been in court with the Town of Gilbert. In 2013 Mr. Blake was invited to a meeting at the Town of Gilbert where they were told that they were going to do a major street project at the corner of Cooper and Guadalupe and they were going to take some of his property to do it. He was also told that he would not be allowed any driveways into his property. This meeting was in May or June 2013. Mr. Blake said that he thought the project had died as he never heard another word about the project until in the litigation talk with Linda Edwards he found out the project was going forward. In the project they are doing they are changing and widening the road and putting in new railroad crossings and will take a considerable amount of his property. This will force him to change the zoning on the other two pieces and to move the operation around. Mr. Blake pointed out that the odd thing was that the traffic count on Guadalupe is 40% less than it was in 2006 and the traffic count on Cooper is the same as it has been for over 10 years. In 2005 they had traffic counts of 27,000 cars and they are down to 18,000 today. Everyone knows that it's because the 202 went through so all the crosstown traffic that they used to have on Guadalupe is now gone. Would it help to have another lane on Cooper Road, sure it would. The traffic there every afternoon is backed up. Mr. Blake said he's been told by the town that the only way they can have access is to take the house out that sits to the North. In order to make a left-hand turn off of Cooper road into his property he has to take the house out as well as repave and re-configure his entire parking lot as well as change all of his landscaping. The town is not reimbursing him in any way to do anything. Now that he has to rezone to commercial to allow the driveway in they are asking him to give them 40 feet of buffer all the way around the edge of the property. A landscape buffer area is of no use to a piece of property. Mr. Blake pointed out that his surrounding neighbors have lived there for a long period of time and they weren't talking about people who haven't lived compatibly together for a very long period of time. He noted that he has several nurseries and has never sold any of his nurseries. Mr. Blake read a letter from one of his neighbors that stated that they did not want the block wall constructed behind their yard and that they had seen photos of the citrus hedge and feel that it will be more in keeping with the agricultural nature of their neighborhood. They found the nursery to be a compatible use and see no reason for the 40 foot landscape set back behind the hedge. Mr. Blake pointed out that when staff called the neighbors they did not explain to the neighbors that there was a 40 foot setback but only that they had the option of a block wall. Mr. Blake said that he was not bringing the application forward because he wanted to and the only reason he was bringing it is was because the Town was forcing him to. The only way that he can have access to his property is to rezone it. As far as the zoning violation, they are still in court and he expected to prevail. He noted that

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he has had over 15 meetings with the town since February and had spent probably another 15 days in conversations with them. He is had to pay rezoning fees and hire professional help to get the zoning process done which has cost him over \$50,000. He's going to be forced to lose the house and re- landscape and rebuild the entire parking lot and zero compensation is being offered for that. The Town is also taking the property along Cooper and Guadalupe Road. He has offered to move the retention to the back so they would take less of the frontage but they are unwilling to do that. Mr. Blake said that he is made a couple of proposals to the Town that is acceptable to the neighbors. Mr. Blake said that there are approximately 50 agricultural retail nurseries in the Valley with only two in Gilbert, A&P and Whitfill. A&P has zero landscape setbacks. Mr. Blake displayed a photo where you could see their neighbors right behind the fence and said that is the nursery standard for every nursery in the state of Arizona. There's nobody who has a setback on any nursery anywhere. Mr. Blake displayed several photos of various businesses in the Town of Gilbert and their lack of setbacks as well as photos of citrus hedges. He pointed out that a citrus hedge is far more secure than any wall they can build. Mr. Blake said he was asking for the deviations because it made sense. The biggest reason was because he was losing 40% of his property to the setbacks. He pointed out that if there was any opposition present who wished to speak that neighbor lived 1630 feet from his property which was about a 3rd of a mile and doesn't have any access to any street that abuts or joins Mr. Blake's property whatsoever. He said that he had a neighborhood meeting with the HOA representatives attending and there was no opposition, the only other person who has moderate opposition was the neighbor who lives next door who filed the complaint in 2008 and hasn't filed one since. He said they purposely did not rezone their other property which abuts this particular neighbor so they wouldn't have any problems.

Chairman Wittmann said that Mr. Blake had mentioned in his presentation that he was required to rezone the initial piece and did not realize that it wasn't zoned appropriately. She asked why he thought that he could expand the use without zoning the property as required in the initial instance.

Mr. Blake said it was because he had nurseries all over the Valley and is never had a problem with zoning before. He thought the reason that the Town wanted the front part zoned was because they had chemicals there. He said that he had 1000 acres of nurseries and this is the only one that is zoned commercial. He said that he believed that when he purchased the property the zoning allowed nurseries and he believed that he was in compliance with zoning and that has been his contention since 2008. He said that they were in court with the Town on that contention. His belief is that they are in compliance and have always been in compliance.

Chairman Wittmann said that the concern isn't necessarily the nursery, the concern is that if they changed the General Plan and the zoning category to make his use compliant that imposes some of the setbacks required in that commercial category. If for some reason his use went away those deviations would run with the land and any future commercial that would develop would be able to develop in those standards. While the neighbors might be comfortable with his use as it is today they may not be so comfortable with any other commercial use that may come in and the Town has no ability to require anything different than what is been approved. That is the quandary. She said that she was trying to figure out a way to allow him to operate in a compatible manner but do not allow future users to enjoy the same benefit as his particular use.

Mr. Blake said that he guessed he was asking the Commission to do that. He was asking basically for them to give him those uses because the property that they are rezoning is only 145 feet wide and to take 40 feet off a 145 foot piece of property is a substantial taking for a use that doesn't serve a purpose. He said the hedges will cost far more money to install than any landscape that he showed them. He said that he could build a block wall far cheaper than putting a hedge up and he could put landscaping behind the block wall cheaper than he can put the hedge up. The hedge is a superior way to handle this environment whether he's there are not. He said that anyone coming in would have a 75 foot building setback and he was not asking them to deviate from that.

Vice Chairman Oehler asked if he would do both, the hedge and the wall.

Mr. Blake said there was no reason to do a hedge and a wall.

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Vice Chairman Oehler said that in an ideal utopia there is no future business coming with another idea or someone comes and doesn't hold up the quality of the trees and how that gets taken care of then yes, the hedge is better. The wall is more permanent and that's the reason the Town has gone with that as a standard. He asked to see the slide of A – Z Rentals. He asked what, as Mr. Blake's business, has stopped him from retaining trees and bushes in that area.

Mr. Blake said the problem is that it's not just his business, it's his property. He said that he was present for his business which he operates and the real reason that he was before them is because the Town is taking the front of his property and he has to put in another driveway and tear a house down and pave the front of his property. In order to try and meet the 40 foot landscape set back, if he dies and his kids want to sell the property they can't sell the property or enjoy it the way it's been because he has a 40 foot landscape set back. What he is saying is that a 40 foot landscape setback doesn't make any sense. He said that citrus trees live longer than walls. Sour oranges live 600 years. If the hedge is maintained, it will be there long after they're all gone. The reason they don't want to put the wall up is because the neighbors don't want it. He pointed out that the right of ways has to be maintained by the property owner. It's not an option. Would they rather have a block wall or a 15 foot hedge?

Vice Chairman Oehler said that he could see two access points to the property from an aerial photo and asked what would happen to those.

Mr. Blake said that the Town is going to put a median in the middle of Cooper road and is going to go past his nursery. Any traffic coming from the South, if they don't take the house out, they will have to go down to Houston make a U-turn and come back. He said that even though they are in condemnation they are still hoping they can negotiate with the Town.

Chairman Wittmann invited citizens who wished to speak on the case to come forward at that time.

Pacer Udall, Gilbert, AZ, came forward. Mr. Udall said that he lived in the community where there are the large one acre lots. He said that he guaranteed that the three streets that are part of his community will always be residential. If the requested zoning takes place it will always be commercial. At some point it will not be owned by Whitfield nursery and there will not be a nursery there. When it is not a nursery it will not blend well. When Shuff Steel or some other high-end commercial development goes in there it's not going to blend well. At some point it will not be a nursery but it will always be residential. He asked why there couldn't be an exception on the zoning, why does it have to be GC, why couldn't it be CC or whatever the step down is to blend more. Maybe there are rules that don't allow that but that would be his first choice. If it's going to be General Commercial that will allow anything and at some point it could be anything his second position in terms of the zoning would be that they must stick to the requirements. The hedge could last a long time but if you don't irrigate it or the new owner comes in and doesn't like it then it's gone and it can't be changed by anyone because it's already set in stone with the zoning. Mr. Udall said it was unfortunate to find their selves in this situation. The issue for the Planning Commission was the zoning and keeping the requirements and they can't have it both ways.

Mr. Blake said they were not asking for any change in the building setback and if someday a commercial project comes in the setbacks will not be changed. He said they were not asking for any deviations in the setbacks and any building will still have to be 75 feet off the property line. He doesn't want to put in a wall because the neighbors do not want a wall. They will have a 15 foot green screen with the wire fence in the center that no one can get through.

Planner Feld said that the 50 foot setbacks for having unenclosed commercial activity adjacent to residential doesn't have anything to do with the building setback, the applicant is absolutely right. It has to do with outdoor activity next to a residential parcel. He pointed out that there was no doubt that this use could be compatible with reduced standards given the situation today. That is not a question, the question is what happens if the use changes. The zoning standards are there for a purpose.

Chairman Wittmann asked if there'd been any discussion with the applicant on alternative methods of seeking approval for the deviations.

Planner Feld said that on several occasions' staff has advised the applicant and the applicant's representative that the variance process would be the most applicable for the situation. The variance if approved would run with the use.

Chairman Wittmann closed the public hearing.

Chairman Wittmann said that she feels for the applicant and that it is an unfortunate circumstance that he is going through and it was somewhat of a hardship. Right now the business is a good use adjacent to the existing single family residences. She understood the applicant's reasons for requesting the reductions as noted in the staff report. However, she did not feel comfortable approving those deviations by right in accordance with what was presented in what was before them to make a decision on. Chairman Wittmann said that her recommendation would be to approve the General Plan Amendment and the zoning case and approve a couple of the deviations requested and suggest to the applicant to seek the necessary variances through the variance process. That is a way to approve those deviations and limit them to a specific use.

Commissioner Cavenee said that he also emphasized with Mr. Blake and mirrored the Chairman's comments. He said that the suggestion of the Chairman was a good idea and would concur with that recommendation. He asked what deviations she thought should be allowed at this juncture with the zoning case.

Chairman Wittmann responded that the building side yard setback is supported by staff, the reduction from 20 feet to zero feet and the use of commercially zoned property to provide vehicular access to residential use would be approved.

Commissioner Cavenee said that he agreed with the residential access across the commercial as that is a logical thing to allow given what the applicant is willing to do in moving the home.

Planner Feld said that the greater nursery is 7 acres and there is no reason to require additional setbacks internally.

Commissioner Cavenee said that the only long-term issue is when the property transfers to a different use or they split those parcels individually that could perhaps create a problem.

Planner Feld said that in the sense that the future user didn't understand that the setback had been deviated, but there are additional building code requirements for building separation. There will be separate requirements as to how close the buildings could be and the construction materials that could be utilized if they really are very close to each other.

Commissioner Cavenee said in that case he concurred with Commissioner's Wittmann's suggestion.

A motion was made by Chairman Jennifer Wittmann and seconded by Vice Chairman Joshua Oehler to recommend to the Town Council approval of GP14 – 08.

Motion carried 7 – 0

A motion was made by Chairman Jennifer Wittmann and seconded by Vice Chairman Joshua Oehler that for the reasons set forth in the staff report move to recommend approval to the Town Council for Z 14 – 18 as requested subject to the conditions listed in the staff report.

Motion carried 7 – 0

Planning Commission
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- A. Recommend to the Town Council approval of GP14-08, to change the land use classification of approximately 2.2 acres of real property generally located northwest of the northwest corner of Cooper Road and Guadalupe Road from Residential > 0-1 DU/Acres to General Commercial (GC) land use classification; AND
- B. FOR THE FOLLOWING REASONS: THE DEVELOPMENT PROPOSAL CONFORMS TO THE INTENT OF THE GENERAL PLAN AND CAN BE APPROPRIATELY COORDINATED WITH EXISTING AND PLANNED DEVELOPMENT OF THE SURROUNDING AREAS, AND ALL REQUIRED PUBLIC NOTICE AND MEETINGS HAVE BEEN HELD, THE PLANNING COMMISSION MOVES TO RECOMMEND approval TO THE TOWN COUNCIL FOR Z14-18 rezoning of approximately 2.2 acres of real property generally located northwest of the northwest corner of Cooper Road and Guadalupe Road from Single Family-35 (SF-35) zoning district to General Commercial (GC) zoning district with a Planned Area Development (PAD) overlay, subject to the following conditions:
1. Cross-access agreement between subject property APN 302-12-024A and the residential property immediately north (APN-302-12-028) shall be executed for primary access to the residential property.
 2. That development shall comply with the Town of Gilbert Land Development Code, except as modified by the following:

<i>Base Standards</i>	<i>GC Zoning</i>	<i>PAD Deviation</i>
Bldg. Sideyard Setback (Non-Residential)	20'	0'
<i>Additional Standards</i>	<i>PAD Deviation</i>	
Use of commercially zoned property to provide primary vehicular access to a residential use is prohibited. (2.306.G)	Use of commercially zoned property to provide primary vehicular access to a residential use is PERMITTED.	

Z14-15(A) - Request to amend the Town of Gilbert Land Development Code: Chapter I Zoning Regulations, Division 4 General Regulations, Article 4.5 Supplemental Use Regulations, Section 4.5014 Medical Marijuana Dispensaries, Offsite Cultivation Sites and Designated Caregiver Cultivation Locations related to hours of operations; Chapter I Zoning Regulations, Division 2 Land Use Regulations, Article 2.3 Commercial Districts, Section 2.305 Additional Development Regulations related to drive-through aisle setback from a residential use; Chapter I Zoning Regulations, Division 4 General Regulations, Article 4.5 Supplemental Use Regulations, Section 4.506 Drive-Through Aisles related to drive-through aisle setback from a residential use; Chapter III Subdivision Regulations, Article 1.2 Minor Land Division and Minor Subdivision, Section 1.209 Effective Date and Expiration Date related to automatic expiration of approval; Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.6 Employment Districts, Section 2.603 Land Use Regulations related to incidental retail use; Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.6 Employment Districts, Section 2.606 Additional Use Regulations related to incidental retail use; Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.2 Multi-Family Residential Districts, Section 2.204 Site Development Regulations related to ground-floor private open space screening; Glossary of General Terms, Building, Detached related to the definition of a detached building; Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.1 Single Family Residential Districts, Section 2.106 Additional Development Regulations related to the height of guest quarters; Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.1 Single Family Residential Districts, Section 2.106 Additional Development Regulations related to accessory structure